IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7505 of 1997

For Approval and Signature:

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NOEL WALLER PARMAR - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR ARUN H MEHTA for Petitioner(s) : 1,
Mr.A.J.Desai,learned AGP for Respondents No.1 and 2
None for respondent No.3

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CORAM : THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 17/04/2006

ORAL JUDGMENT

1. The petitioner herein is a Police Inspector who has filed the present writ petition, being aggrieved by the seniority assigned to respondent No.3 over and above him. By way of relief, the petitioner has prayed as under:

> "(A) That by appropriate writ direction and order issued by this Hon'ble Court, the respondents No.1 and 2, their officers, servants and agents be directed to treat the petitioner as senior to the third respondent and if necessary, correct the seniority list on that basis and further by such writ direction and order,respondents No.1 and 2 be directed to put the name of the petitioner in the select list of Police Inspectors to be considered for appointment to the post of Dy.S.P. and that the case of the petitioner be put before the Selection Committee as and when it is constituted, for consideration and recommendations and the petitioner be appointed as Dy.S.P., as per recommendations of the Select Committee;
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> (B) Pending hearing and final disposal of this petition, ad interim and interim orders respondents No.1 and 2 be directed to put the name of the petitioner in the select list of Police Inspectors to be considered for appointment to the post of Dy.S.P. and that the case of the petitioner be put before the Selection Committee as and when it is constituted, for consideration and recommendations and the petitioner be appointed as Dy.S.P., as per recommendations of the Select Committee;"

2. It is the case of the petitioner that he joined the Police Training School at Junagadh on 1.1.1966. The respondent No.3 also joined the police Training School at Junagadh with effect from the same date. The petitioner passed the “C” term i.e. first term examination on 30.6.1966. similarly, the respondent No.3 also passed the “C” term i.e. first term examination with effect from the same date. Thereafter, the petitioner failed in the “B” term i.e second term examination held after 12 months of joining the School on 30.12.66. However, the respondent No.3 passed the “B” term i.e. second term examination held after 12 months of joining the School on 30.12.66. The petitioner thereafter passed “A” term final examination i.e. 3rd term examination on 30.11.67. The respondent No.3 failed in the “A” term final examination i.e. Third term examination on 30.6.67. However, the respondent No.3 passed the “A” term final examination i.e. third term examination on 30.11.67 i.e. on the dame day on which the petitioner passed the said examination. Relying upon the provisions of Rule 89(3)of the Bombay Police Manual, the petitioner claims that he should have been given

seniority over and above the respondent No.3. Instead of this, the respondents No.1 and 2 have wrongly assigned seniority to the respondent No.3 over the petitioner.

3. Affidavit in reply has been filed by respondent No.2 and thereafter the rejoinder has been filed by the petitioner.

4. I have heard Mr. Arun H.Mehta,learned counsel for the petitioner and Mr.A.J.Desai, learned AGP on behalf of respondent Nos.1 and 2 and have gone through the pleadings and other material on record. In the affidavit in reply filed by respondent No.2, an objection has been taken regarding delay and laches, apart from other submissions on merits.

5. It is an admitted position that the petitioner as well as the respondent No.3 passed the “A” term final examination on 30.11.1967 and the writ petition has been filed in the year 1997. A perusal of the averments made in the writ petition reveal that there is no explanation regarding the fact that 30 years

have elapsed after the 3rd term examination was passed by the petitioner and respondent No.3 till the filing of the writ petition. It is not as if the petitioner was not aware of the fact that his name appeared at Sr.No.46 of the list of P.S.I. Cadets, in order of merit, who passed out from the Police Training College, Junagadh in November 1967. The name of respondent No.3 figured at Sr.No.38. This list has been annexed by the respondent No.2 as Annexure “I” to the reply affidavit. A perusal of this list reveals that it is merely a list of cadets, who have passed from the Police Training College, Junagadh, in order of merit and it is not a substantive seniority list reflecting the final seniority of the petitioner and the respondent No.3. In fact, in the rejoinder filed by him the petitioner has made a categorical submission in para 2 thereof that “ In other words, so far as the seniority of the petitioner and the respondent No.3 is concerned, it is still not finalised and no final seniority list is prepared as yet.”

6. In the entire petition there is no explanation,

leave alone any sufficient or reasonable cause, pertaining to the gross delay of about 30 years in filing the writ petition. Needles to say, there is no application for condonation of delay. When confronted with this, the petitioner has relied upon **AIR 1974 SC 259 (R.S.Deodhar v. State of Maharashtra)** wherein it is held that "The rule which says that a Court may not inquire into belated or stale claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay the Court must necessarily refuse to entertain the petition. The question is one of discretion to be followed on the facts of each case."

7. There can be no quarrel with this proposition of law and, as has been stated by the Supreme Court, the question whether to entertain the petition which suffers from delay, or not, is a question to be decided on the facts of each particular case.

8. In my considered view, this is not a case in which the question of delay can be lightly brushed

aside. The petitioner has prayed for a direction to treat him as senior to the respondent No.3 and, if necessary, correct the seniority list so that the name of the petitioner is reflected in the seniority list of Police Inspectors, who are to be considered for appointment to the post of Dy.S.P. It is an admitted position that even though the petitioner was very well aware that his name was figuring at Sr.No.46 in the order of merit of cadets passing the Police Training, whereas that of respondent No.3 was figuring at Sr.No.38, the petitioner chose to ignore this aspect for more than 30 years. It is also equally true, that gradation of cadets who passed out from the Police training College, Junagadh in November 1967 is as per the merit obtained by them while passing the final examination, and it is not a substantive seniority list. The petitioner has himself admitted that no final seniority list has been prepared till the date of filing the writ petition. This being the position, then the petitioner can have no grievance against the seniority position qua respondent No.3, and neither can he seek any direction regarding it.

9. In the affidavit in reply, the respondent No.2 has stated that respondent No.3 obtained 1080 marks in the final examination, the result of which was declared on 30.11.1967, whereas the petitioner did not even obtain the minimum marks required for passing the said examination. The petitioner had obtained only 961 marks and was given grace marks. That being the position the petitioner was ranked at Sr.No.46 and the respondent No.3 at Sr.No.38 in the order of merit in the list of cadets who had passed the final examination of the Police Training College, Junagadh in November 1967.

10. It is a settled position of law that seniority should not ordinarily be disturbed by the court after a long lapse of time and the settled position should not be unsettled. The petitioner, knowing full well that he was ranking below the respondent No.3 in the order of merit, choose not to raise any grievance or make any objection at the relevant point of time. It is only when the petitioner and the respondent No.3 both came into the zone of consideration for

appointment to the post of Dy.S.P. that the petitioner chose to wake up from his long slumber and agitate the placement given by the respondent department to the petitioner and the respondent No.3 in the order of merit of having passed the examination in the year 1967. Having chosen not to raise any objection or make any representation against the said placement the petitioner has acquiesced to the factual situation regarding order of merit in which he and respondent No.3 have been placed. Even otherwise, no final seniority list is in existence, as per the averments of the petitioner himself, therefore there is no cause of action which can be said to have accrued to him. He cannot, therefore,rake up this matter and agitate it at such a belated stage.

11. The petitioner had no quarrel with the interpretation put by the respondents on Rule 89(3) for 30 years, and such a belated objection can not be raised by him after over three decades. The petitioner cannot be allowed to approbate and reprobate in the same breath and having acquiesced to

the situation and having chosen to remain silent ever since 1967, he cannot now claim the relief of seniority over respondent No.3. Since no final seniority list has been prepared, such a prayer is untenable and clearly an after-thought, in order to gain some advantage regarding appointment as Dy.S.P. Therefore, the claim of the petitioner for grant of seniority over respondent No.3 cannot be acceded to, being baseless.

12. In **(1992)4 SCC 455 (S.B.Dogra v. State of Himachal Pradesh and others)** the Supreme Court has held as under in para 10 thereof:

> “On the other hand Rule 5(1) of the 1972 Rules states that the seniority of candidates appointed against the vacancies reserved under Rule 3 shall be determined `on the assumption' that they joined service and the post under the State Government `at the first opportunity' they had `after' they joined military service or training prior to commission. The language of this rule is, therefore, altogether different from the language of the Haryana rules on which A.S.Parmar case was decided. Now on the construction of this Rule 5(1), the seniority assigned to Dogra was three places above Amist in the tentative seniority list circulated in March 1977 which came to be finalised in February 1979. No objection was raised by Amist regarding the placement given to Dogra in the seniority list. Some other junior officers had

challenged it in the High Court but without success. Amist challenged it for the first time in 1983 after his name was dropped from the Select List of 1982. Had the writ petition been disposed of before the Central Administrative Tribunals Act, 1985, came into force, it would perhaps have met the same fate of dismissal as Writ Petition No.280 of 1978 and L.P.A. No.18 of 1981. But that apart, the Tribunal ought not to have disturbed the seniority after such a long lapse of time when Amist had not challenged it before the same was finalized in February 1979. Amist should have challenged Dogra's placement in the seniority list which was circulated in March 1977 inviting objections before it was finalised. If he had no objection then it is obvious that he challenged it in 1983 only because his name was dropped from the Select List of 1982. In the circumstances, the Tribunal should have been slow in interfering with the seniority which was holding the field for the last several years. That is the view expressed by this Court in State of M.P. v. Rameshwar Prasad. In that case the seniority was fixed according to the length of service in regard to the classified officers and the grades held by those officers. No objection was filed by the respondent to the provisional gradation list so prepared. He filed an objection only after the final gradation list was published. Contending that the services rendered by the Madhya Bharat and Vindhya Pradesh officers prior to the coming into force of the Sales Tax Acts in the respective States should not have been counted for the purpose of determining the seniority of the respondent. The High Court allowed the belated representation and hence the matter was brought before this Court in appeal. This Court held that after the reorganisation of the States it was obligatory to prepare a common gradation list of the officers of the various departments so that the officers who were allocated to the new State did not suffer any prejudice. For that a tentative or provisional gradation list was directed to be prepared with a view to giving an opportunity to the officers whose seniority was

> determined in the list to make their representations in order to satisfy the Government regarding any mistake or error that may have crept in. If the employee concerned did not file his representation within the period prescribed after the date of the publication of the provisional gradation list, then his representation should have been rejected outright. It is erroneous to contend that the employee concerned should have waited for filing his representation or objection until the final gradation list was published. Therefore, the representation filed by the respondent long after the expiry of the time mentioned in the Gazette publishing the provisional gradation list was rejected as belated. The observations made in this judgment apply with all force to the fact situation in the case before us."

13. Moreover, in **AIR 1990 SC 1607 (Direct Recruit Class II Engg. Officers' Assocn. v. State of Maharashtra)** in para 44(J) the Supreme Court has held as under:

> "(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. <u>It is not in the interest of Service to unsettle a settled position."</u>
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> (emphasis supplied)

14. After giving due consideration to the factual and legal position, and after applying the ratio of the two judgments i.e. **S.B.Dogra v. State of Himachal Pradesh and others (Supra) and Direct Recruit Class**

II Engg. Officers' Assocn. v. State of Maharashtra (Supra), this Court is of the considered opinion that the petitioner does not deserve to be granted relief as prayed for by him. Apart from there being no explanation whatsoever regarding the gross delay in filing the said petition, the petitioner has acquiesced to his placement in the order of merit in the list prepared by the respondent department and has not raised any objection or made any representation for a period of over 30 years. In the absence of a final seniority list, even the tentative seniority cannot be upset at his own sweet will, when he deems it expedient to approach the court, ignoring the rights of third parties, which might have accrued in the intervening period of over three decades. A seniority list which is not in existence or on record, cannot be challenged or sought to be tampered with lightly, at the behest of the petitioner in such a casual manner, and after such a long period of time.

15. For the above reasons, there is no merit in the petition and the same is dismissed. Rule is

discharged. There is no order as to costs.

(Smt.Abhilasha Kumari,J)

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